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# You Poh Khoon v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO A-05(M)-244–05 OF 2022
KAMALUDIN MD SAID, HADHARIAH SYED ISMAIL AND AZMAN ABDULLAH JJCA
19 JUNE 2023

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*Criminal Procedure — Appeal — Appeal against conviction and sentence — Murder — Appellant raised defence of insanity — High Court convicted appellant for offence of murder — Appellant was sentenced to death — Onus of proving insanity — Whether defence of insanity under s 84 of Penal Code established — Whether circumstantial evidence pointed to the only irresistible conclusion that appellant committed the offence and defence of insanity failed — Whether prosecution proved case beyond reasonable doubt — Whether conviction was safe — Evidence Act 1950 s 105 — Penal Code ss 84, 300(c) & 302*

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The accused ('the appellant') in the present case was charged under s 302 of the Penal Code ('the PC'). The appellant was alleged to have decapacitated his father ('the deceased'), causing his death and thereafter cut off the hands and legs of the deceased. The case of the prosecution was based on the circumstantial evidence, inter alia: (a) the evidence of SP3 who testified that the appellant told him that he had cut off the deceased's legs, hands and heads and buried the same behind the house and that the appellant had thrown the body of the deceased into a sewage tank; and (b) the forensic psychiatric report by SP15 and the oral testimony of SP15 that at the time of the commission of the act, the appellant was mentally sound, and the appellant understood the nature and consequence of his acts, and was capable of knowing the acts were wrong and against the law. The prosecution relied on s 300(c) of the PC in which, culpable homicide was murder if it was done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. The appellant raised the defence of insanity under s 84 of the PC and relied upon the testimony of SP2, SP3, SP4, SP5, SP6 and SP7 that the appellant was intoxicated and having a mental problem. The appellant argued that he had killed 'hantu'. At the end of the case, the learned judicial commissioner ('JC') found that the appellant failed to raise a reasonable doubt to the prosecution's case and that the prosecution had successfully proven the case against the appellant beyond a reasonable doubt. Thus, the appellant was found guilty and convicted of the charge against him and sentenced to death, hence, the present appeal. The

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main issue of the appellant's appeal was on the defence of insanity pursuant to s 84 of the PC.

**Held**, dismissing the appeal and affirming the conviction and sentence imposed by the High Court:

(1) The onus of proving insanity was on the accused pursuant to s 105 of the Evidence Act 1950. It was trite law that when the defence of insanity was raised, the accused must prove the defence on the balance of probabilities and not merely to cast a reasonable doubt in the prosecution case (see para 43).

(2) For the defence of insanity or unsound mind, what was material was that there must be evidence that at the time when the act or omission was to have occurred the appellant must be in the state that he did not know that such act or omission was wrong or contrary to law. However, in the present case, the evidence showed that the appellant knew that he had killed the deceased. Even though he said that he had killed 'hantu', but he knew what he did was the act of killing. That was why when the appellant met SP3, he told SP3 that he had killed the deceased. Nothing from the evidence showed the appellant was of unsound mind at the time he committed the act of killing. The appellant's conducts such as he wore glove when killing the deceased, he decapitated the deceased to make it easier for him to dispose the deceased and he changed his cloth before he drove to meet SP3 showed that he understood the nature of what he was doing was wrong (see paras 41–42).

(3) Having gone through the appeal record carefully, the court found that the learned JC was correct in his finding of fact that the defence raised by the appellant on insanity was not proven. It was not only SP15 found in his report that the appellant was sane at the time of commission of the offence, but the other circumstantial evidences also led to a conclusion that the appellant had committed the offence and at the time of the commission of the offence, the appellant was capable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. Notably also that expert medical evidence was necessary in the realm of forensic science as it was not something that the court could determine without the benefit of expert opinion. Therefore, the court was of the view that the strands of circumstantial evidence led by the prosecution had clearly and undoubtedly showed that the appellant understood the consequence of his act. Besides, the testimony given by SP2, SP3, SP4, SP5, SP6 dan SP7 which was relied on by the defence also could not prove the appellant's defence of insanity (see paras 46–47).

(4) The overall circumstantial evidence adduced by the prosecution pointed to the only irresistible conclusion that the appellant had committed the offence and the defence of insanity raised failed. The court found no

merit in the appeal and unanimously decided that the conviction against the appellant was safe and needed no intervention by the court (see para 48).

**[Bahasa Malaysia summary**

Tertuduh ('perayu') dalam kes ini telah didakwa di bawah s 302 Kanun Keseksaan ('KK'). Perayu didakwa telah menghilangkan keupayaan bapanya ('si mati'), menyebabkan kematiannya dan selepas itu memotong tangan dan kaki si mati. Kes pendakwaan adalah berdasarkan keterangan mengikut keadaan, antara lain: (a) keterangan SP3 yang menyatakan bahawa perayu memberitahunya bahawa dia telah memotong kaki, tangan dan kepala si mati dan menanamnya di belakang rumah dan bahawa perayu telah membuang badan si mati ke dalam tangki najis; dan (b) laporan psikiatri forensik oleh SP15 dan keterangan lisan SP15 bahawa pada masa perbuatan tersebut dilakukan, perayu sihat dari segi mental, dan perayu memahami keadaan dan akibat perbuatannya, dan mampu mengetahui perbuatan tersebut adalah salah dan berlawanan dengan undang-undang. Pihak pendakwaan bergantung pada s 300(c) KK di mana, mematikan orang dengan salah adalah membunuh jika perbuatan itu dilakukan dengan niat hendak menyebabkan bencana tubuh kepada seseorang, dan bencana tubuh yang dimaksud hendak dikenakan itu adalah cukup, pada lazimnya, bagi menyebabkan kematian. Perayu membangkitkan pembelaan tidak sempurna akal di bawah s 84 KK dan bergantung kepada keterangan SP2, SP3, SP4, SP5, SP6 dan SP7 bahawa perayu mabuk dan mengalami masalah mental. Perayu telah menyatakan bahawa dia telah membunuh 'hantu'. Pada akhir kes, pesuruhjaya kehakiman yang bijaksana ('PK') mendapati perayu gagal menimbulkan keraguan munasabah kepada kes pendakwaan dan bahawa pihak pendakwaan telah berjaya membuktikan kes terhadap perayu melampaui keraguan munasabah. Oleh itu, perayu didapati bersalah dan disabitkan dengan pertuduhan terhadapnya dan dijatuhkan hukuman mati, justeru, rayuan semasa. Isu utama rayuan perayu adalah mengenai pembelaan tidak sempurna akal menurut s 84 KK.

**Diputuskan**, menolak rayuan dan mengesahkan sabitan dan hukuman yang dikenakan oleh Mahkamah Tinggi:

(1) Tanggungjawab membuktikan ketidaksempurnaan akal adalah ke atas tertuduh menurut s 105 Akta Keterangan 1950. Adalah menjadi undang-undang yang mantap bahawa apabila pembelaan tidak sempurna akal dibangkitkan, tertuduh perlu membuktikan pembelaan atas imbangan kebarangkalian dan bukan semata-mata untuk menimbulkan keraguan munasabah dalam kes pendakwaan (lihat perenggan 43).

(2) Bagi pembelaan tidak waras atau tidak sempurna akal, apa yang material ialah perlu ada keterangan bahawa pada masa perbuatan atau

peninggalan tersebut berlaku perayu mestilah dalam keadaan dia tidak tahu bahawa perbuatan atau peninggalan tersebut adalah salah atau berlawanan dengan undang-undang. Bagaimanapun, dalam kes ini, keterangan menunjukkan perayu tahu bahawa dia telah membunuh si mati. Walaupun dia mengatakan bahawa dia telah membunuh 'hantu', tetapi dia tahu apa yang dia lakukan adalah perbuatan membunuh. Sebab itu apabila perayu berjumpa SP3, dia memberitahu SP3 bahawa dia telah membunuh si mati. Tiada apa-apa daripada keterangan menunjukkan perayu tidak sempurna akal semasa dia melakukan perbuatan membunuh. Perbuatan perayu seperti memakai sarung tangan ketika membunuh si mati, dia memotong anggota si mati untuk memudahkannya membuang si mati dan dia menukar pakaiannya sebelum memandu untuk berjumpa SP3 menunjukkan bahawa dia faham apa yang dia lakukan adalah salah (lihat perenggan 41–42).

(3) Setelah meneliti rekod rayuan dengan teliti, mahkamah mendapati PK yang bijaksana adalah betul dalam dapatan fakta bahawa pembelaan yang dibangkitkan oleh perayu mengenai ketidaksempurnaan akal tidak dibuktikan. Bukan sahaja SP15 mendapati dalam laporannya bahawa perayu berada dalam keadaan waras semasa melakukan kesalahan tersebut, malahan keterangan mengikut keadaan yang lain juga membawa kepada kesimpulan bahawa perayu telah melakukan kesalahan tersebut dan pada masa kesalahan tersebut dilakukan, perayu berkemampuan untuk mengetahui keadaan perbuatannya atau bahawa apa yang dia lakukan adalah sama ada salah atau berlawanan dengan undang-undang. Perlu diambil perhatian bahawa keterangan perubatan pakar adalah perlu dalam bidang sains forensik kerana ia bukanlah sesuatu yang boleh ditentukan oleh mahkamah tanpa faedah pendapat pakar. Oleh itu, mahkamah berpendapat bahawa keseluruhan keterangan mengikut keadaan yang dikemukakan oleh pihak pendakwaan telah secara jelas dan pasti menunjukkan bahawa perayu memahami akibat perbuatannya. Selain itu, keterangan SP2, SP3, SP4, SP5, SP6 dan SP7 yang menjadi sandaran pihak pembelaan juga tidak dapat membuktikan pembelaan tidak sempurna akal yang dibangkitkan oleh perayu (lihat perenggan 46–47).

(4) Keseluruhan keterangan mengikut keadaan yang dikemukakan oleh pihak pendakwaan membawa kepada satu-satunya kesimpulan yang tidak dapat ditolak bahawa perayu telah melakukan kesalahan tersebut dan pembelaan tidak sempurna akal yang dibangkitkan telah gagal. Mahkamah mendapati tiada merit dalam rayuan dan sebulat suara memutuskan bahawa sabitan terhadap perayu adalah selamat dan tidak memerlukan campur tangan mahkamah (lihat perenggan 48).]

**Cases referred to**

*Amathevelli a/p P Ramasamy v PP* [2009] 2 MLJ 367; [2009] 3 CLJ 109, FC (refd)
*Goh Yoke v PP* [1970] 1 MLJ 63, FC (refd)
*Munesuaran a/l Ramasamy lwn Pendakwa Raya* [2015] MLJU 1958; [2016] 2 CLJ 210, CA (refd)
*Pathmanabhan a/l Nalliannen v PP and other appeals* [2017] 3 MLJ 141; [2017] 4 CLJ 137, FC (refd)
*PP v Dato' Seri Anwar bin Ibrahim (No 3)* [1999] 2 MLJ 1; [1999] 2 CLJ 215, HC (refd)
*PP v Mohamed Noor Jantan* [1979] 2 MLJ 80 (refd)
*PP v Shalima Bi* [2016] 1 MLJ 799, CA (folld)
*PP v Tai Mei Yuen* [2004] 4 MLJ 541, HC (refd)
*Rajagopal v PP* [1977] 1 MLJ 6, FC (refd)
*Siew Yoke Keong v PP* [2013] 3 MLJ 630; [2013] 4 CLJ 149, FC (refd)
*Wong Chooi v PP* [1967] 2 MLJ 180 (refd)

**Legislation referred to**

Evidence Act 1950 ss 8(1), 27, 27(1), 105
Penal Code ss 84, 85(2)(b), 300(c), 302

**Appeal from:** *Public Prosecutor v You Poh Khoon* [2022] MLJU 1407 (High Court, Ipoh)

*Amir Faliq bin Mohamad Jamil (with Siti Nor Syahidah bt Ismail and Afina bt Abdul Hakim) (Amirfaliq & Syahidah) for the appellant.*
*Muhammad Azmi bin Mashud (Attorney General's Chambers) for the respondent.*

**Azman Abdullah JCA:**

INTRODUCTION

**[1]** This is an appeal by You Poh Khoon ('the appellant' or 'the accused') against the decision of the High Court which found that the appellant was guilty of the charge and convicted under s 302 of the Penal Code. The appellant was sentenced to death.

**[2]** After reading the written submissions filed, hearing both parties orally and perusing the records of appeal, we unanimously decided to dismiss the appeal.

THE PROSECUTION'S CASE

**[3]** The appellant was alleged to have decapacitated his father, You Su Kim, causing his death and thereafter cut off the hands and legs of the deceased. The

charge against the him reads as follows:

> Bahawa kamu di antara 8 Oktober 2018, jam lebih kurang 3.00 petang hingga 9 Oktober 2018, jam lebih kurang 10.30 pagi, di alamat No. 564, Khantan Baru, Chemor, lpoh, di dalam daerah Kinta, di dalam negeri Perak, telah membunuh You Su Kim, (No. KP 441111–08–5427) dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

**[4]** The learned judicial commissioner ('JC') had outlined the material facts of prosecution case in his grounds of judgment which we respectfully adopt them with modification whenever necessary.

**[5]** It is on 9 October 2018, at approximately 9.20am, when SP5, SP7 and SP6 came to the deceased's house for a visit, they could not find the deceased. SP5 then contacted the appellant and she was informed that the deceased was sleeping.

**[6]** At around 10.30am, SP5 contacted her husband who is SP3 and informed him that the deceased and the appellant could not be found. After that, SP3 received call from the appellant who asked him to come back to his rented house. When SP3 arrived, he saw that the appellant was waiting outside the house.

**[7]** When SP3 asked the appellant in Chinese language whether the appellant take care of the father. The appellant then replied that he had cut the father to death. SP3 further asked how the appellant cut the deceased and where he kept the deceased. The appellant answered that he had cut off the deceased's legs, hands and head. The legs, hands and head then were buried behind the house and the body was thrown into a sewage tank. SP3 was not shocked as he knows that the appellant has mental problem. Then SP3 asked the appellant to show him the deceased whereabouts so that they can perform burial ceremony for the deceased. They arrived at the crime scene around 12pm. The appellant then showed to SP3 the back of the house which the appellant informed SP3 on the location of the deceased. SP3 can see that the sewage tank was open and there is mark on the ground.

**[8]** After that, SP3 brought the appellant to a restaurant near Chemor. At that time, SP3 already informed his son SP4 to contact SP5 (SP3 wife's) with instruction for SP5 to dig into the ground at the back of the appellant's house and check whether the deceased's part of body can be found.

**[9]** Upon receiving the instruction from SP4, SP5 and SP6 went to the house and dug into the ground where SP5 found the head of the deceased. SP5

then informed the neighbor, SP2. SP2 lodged a report in Laporan Polis Khantan Baru Rpt 795/2018 (exh P6).

**[10]** SP8 had arrested the appellant on the same date at around 1.40pm. The accused was brought to the house for further investigation. During this investigation, the appellant had informed SP8 where there was a human head and pointed to the sewage tank leading the forensic police team to find a headless body followed by the finding of a head, two legs and two hands.

**[11]** As there was no eyewitness to the murder of the deceased, the prosecution relied on the circumstantial evidence to prove that the accused caused the death of the deceased which we summarise as follows:

(a) the appellant's statement to SP3 that he killed the deceased were admissions made without any undue influence including threats or promises. SP3 informed his wife (SP5) and where SP5 together with SP6 found the head of the deceased. Besides, it is from the fact that the appellant himself lead SP3 and SP8 to a place where the deceased was placed after he was killed;

(b) SP11 the chemist tendered his report (P23) in evidence, shows that the deceased's DNA obtained from samples of fingernails, bone and blood specimens of the deceased which were found to match the DNA found on samples of blood stains on the things found at the scene namely, inter alia, the mattress, gloves, bed sheets, plastic bag, and a white cotton swab;

(c) the chemist report (P23) also stated that a mixed DNA profiling was carried out on two individuals on blood samples taken from a t-shirt and traces obtained from the gloves (P31B) found at the scene and found them to have the DNA of both, the deceased and the accused, and thus placing the accused at the scene;

(d) the autopsy report of SP13 confirms the cause of death namely, the cuts to the neck. This report also confirms the cuts to the hands and legs of the deceased as told by the accused to SP3; and

(e) From the forensic psychiatric report (P59) dated 7 November 2018 which was presented by Dr Ian Lloyd a/l Anthony (SP15) and his oral testimony, SP15 was of the opinion that at the time of the commission of the act on 9 October 2018, the accused was mentally sound, and understands the nature and consequence of his acts, and was capable of knowing that the acts were wrong and against the law.

**[12]** In this case, the prosecution relied on s 300(c) of the Penal Code in which, culpable homicide is murder if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is

sufficient in the ordinary course of nature to cause death.

**[13]** To support the prosecution's case, a large and long machete (P34A) was found at the scene. The prosecution asserted that the 0.7meter machete (P34A) is clearly a dangerous weapon and upon it being shown to the pathologist, SP13, she testified that the injury caused to the deceased could be caused by such a weapon. SP13 further added that the force used to cut human bones would be great and not slight.

**[14]** According to the prosecution, with the accompanying great force required to be used, it would lead to the inference that there was intention accompanying the multiple cuts to cause the bodily injuries inflicted which would be sufficient in the ordinary cause of nature to cause death. And, by reason thereto, culpable homicide amounting to murder pursuant to s 300(c) of the Penal Code had been proven.

**[15]** While the defence took the position that at the time of the event, the accused had lost his mind or was not of sound mind or by reason of intoxication brought about by an abuse of drugs, he was insane and by reason thereto did not possess the mental ability and capacity to be aware of his act and its effect at the time of the event. The defence further submitted that the prosecution has failed to prove and to make out a prima facie case against the accused that the accused had the intention to murder his father.

FINDINGS OF THE LEARNED JC AT THE CLOSE OF THE PROSECUTION'S CASE

**[16]** At the the close of the prosecution's case, the learned JC found that the prosecution had successfully made out a prima facie case against the appellant as per the charge. As a result, the appellants were ordered to enter their defence.

**[17]** In arriving at this decision, the learned JC made his findings of fact as follows:

(a) although the defence was content to rely only upon the defence of unsoundness of mind at the time of inflicting the injuries, the learned JC will still subject the evidence led by the prosecution to maximum evaluation to find whether the prosecution has made out a prima facie case for murder;

(b) the High Court accepted the evidence of SP3. The High Court also accepted the unchallenged evidence of SP13, the forensic pathologist, that the death of the deceased was caused by him having been beheaded with three cuts to the head, one at the chin, another at the front of the neck and the other at the back bone of the neck;

(c) the High Court found that the horrific injuries were caused by the accused premised upon the following pieces of evidence:

(i) the accused's admission to his brother-in-law (SP3) that he had cut his father to death;

(ii) the chemist report (P23) and the testimony of SP11, the Chemist, that the DNA samples of both the accused and the deceased were found on the T-shirt and gloves (P31B) at the scene of the crime;

(iii) the body parts including the head of the deceased were found where the deceased had told SP3; and

(iv) the exact location of the head, the hands and the legs were pointed out by the accused as can be seen in the photographs P8 (27, 28 and 29) to the arresting officer, SP8, and the Investigating Officer (SP16) who found the parts at the locations pointed out by the accused and the information obtained contemporaneously reduced into police reports (P11 and P64) respectively with both of them giving oral testimony to this effect (from SP8, NE pp 56–57, and from SP16, NE pp 246–247).

(d) s 27(1) of the Evidence Act 1950 relied upon by the prosecution allows the discovery of the location of the remains of the deceased in consequence of information from the accused in the custody of a police officer (SP8) to be proved. This piece of evidence serves to confirm and support the police reports made by SP8 and SP16 that their testimony is credible, see *Amathevelli a/p P Ramasamy v Public Prosecutor* [2009] 2 MLJ 367; [2009] 3 CLJ 109 (FC);

(e) although the information given by the accused to SP8 leading to the discovery of the dismembered parts of the body does not amount to a confession, the information is evidence which has much probative value that outweighs any prejudicial effect which the High Court accepts to be admissible under s 27 of the Evidence Act 1950. Wherefore, the court had no hesitation in admitting and accepting the evidence of SP8 that the accused had pointed out to where the body parts of the deceased as conduct that corroborates the prosecution's case that the accused was the one who caused the death of the deceased;

(f) the learned JC also found that the death was caused with the intention of causing bodily injury to the deceased and that the bodily injury intended to be inflicted upon him is sufficient in the ordinary course of nature to cause his death;

(g) in evaluating the evidence with regard to the defence of unsoundness of mind, the JC did consider the following legal principles:

(i) there is a difference between the defence of unsoundness of mind

under s 84 of the Penal Code and the defence of insanity by reason of intoxication under sub-s 85(2)(b);

(ii) the concept of unsoundness of mind under s 84 refers to an abnormal state of mind that covers diseases and deficiencies of the mind, both of which are permanent conditions whereas the concept of temporarily or otherwise insane by reason of intoxication refers to an abnormal state of mind that can, inter alia, be transient in that he is legally insane at the time of the commission of the act under sub-s 85(2)(b);

(iii) if the facts tendered are such that the accused was medically and legally insane at the time he committed the act or acts, the need to proceed with a full trial can be dispensed with, if both the prosecution and the defence, do not dispute that the accused was of unsound mind or insane by reason of intoxication at the time of the commission of the act or acts;

(iv) although under s 105 of the Evidence Act 1950 the burden is on the accused to prove unsoundness of mind, it would be commendable of the prosecution to call expert medical evidence to show the mental state of the accused at the time he committed the offence instead of insisting that it was for the accused to do so, if and when, his defence is called; and

(v) the defence of insanity is not available to an accused who was not labouring under any form of unsoundness of mind and knew that the nature of what he did was against the law.

(h) the prosecution in this case do not accept that the accused was medically or legally insane at the time of the commission of the act or acts. The prosecution had in fact led medical evidence to show that the accused knew that the nature of what he did was against the law, whereas the defence during the prosecution's case had raised both defences under s 84 and sub-s 85(2)(b) of the Penal Code;

(i) the learned JC further held that the conduct of the accused immediately after the commission of the act or acts showed that he was rational and displayed guilt when the following pieces of evidence were taken into account:

(i) the accused was able to drive a car with manual transmission about 100km to Parit Buntar, Perak, locate SP3's rented house to see SP3 proves that his mind was stable enough to make the decision of locating and informing his brother-in-law of the commission of the act or acts;

(ii) SP15 opined that for a person to be able to drive 100km will give the impression that the person's motor coordination to manage the

motor vehicle is relatively intact and if a person is able to tell another person what he did would lead to the inference that his mental condition and his memory of the event in connection with what he has just done is still intact; and

(iii) SP15 also gave evidence that he carried out a comprehensive observation on the accused and found that the information given by the accused to be consistent throughout the period of evaluation and that the accused was able to recall consistently the offence as set out in the charge sheet. Besides, SP15 also considered the history of drug taking by the accused. According to SP15, merely consuming a drug does not render a person automatically to be intoxicated. SP15 found that the accused was not suffering from depression, mania or psychosis at the time of the offence. That he was not suffering from psychosis by reason of being drunk or drugged. His orientation, cognitive faculty, concentration, memory and motor skills were intact for the period immediately before, after and at the time of the commission of the offence that he was charged with.

(j) the accused also told SP3, in detail, the identity of the victim, the cuts that he had made to the victim, and the exact location where he had hidden the body parts wherein they were subsequently found. By him hiding the body parts shows guilt and this leads to the inference that the accused knew the nature of his acts was wrong. The accused was also able to tell SP8 soon thereafter on the same day;

(k) the learned JC further stated that SP13 had testified that with such cuts made to the deceased, especially to the neck's main artery and veins, a lot of blood would gush out and splash onto the body or clothes of the assailant and would stain the machete. However, when the accused met SP3, after having cut his father, he was normal with no blood stains, earth or dirt on him. Thus, the learned JC agreed with the prosecution that this shows that the accused had taken the trouble to clean himself up, change his clothes just like what a rational and sane person would do after the commission of the act or acts with the view to hiding all traces of his wrongful acts;

(l) furthermore, when the accused was in SP3's car, he told SP3 that he was scared of being arrested after he saw the police which show guilt and that he knew that what he has done was wrong. This is further underscored by the accused trying to run away and resisting arrest according to SP8;

(m) even though the accused told SP3 that he has seen a person killing his son and that was why he killed that person, however, it is to be recalled that just after the commissions of the act or acts, the accused drove to tell SP3 that he had cut his father dead and not some devil;

(n) the learned JC was also persuaded by the prosecution's submission that the cuts were not done by the accused in response to a person who is attacking him. Instead, the deceased was bedridden, cannot ambulate on his own as evidenced by his bedsores and wholly dependent upon the accused to move him, to bathe him and even to be cleaned up after passing motion and therefore could not be a person who could be making any attacks;

(o) from the testimony of SP13, the dismemberment of the other limbs was done after the victim had been decapacitated with his blood drained out as evidenced by the lack of blood at the parts where the limbs were cut. Dismemberment was done to facilitate the hiding of the body in a structured manner with the limbs put into a black garbage plastic bag, the head placed on a plastic sheet and buried together with the limbs and the body put into another plastic bag and thrown into the sewage tank before closing the cover. The floor of the room where the blood-stained mattress was found together with the long machete were cleaned of blood stains. All of which taken together would drive any reasonable tribunal to infer that the acts were carried out in a methodical and structured manner leading to the inference that the acts were premeditated and certainly not the acts of a person said to be hallucinating, insane or of unsound mind; and

(p) reliance by the defence on the medical report (P60) is of no assistance to the defence as there is no mention of the accused being in a state of intoxication. Further reliance by defence on the medical reports in P58, P61 and P61A is also misplaced as the report in P58 merely says that the accused has a history of drug dependency and did not state that the accused was intoxicated with drugs on 8 or 9 October 2018, whereas P61 and P61A says the accused tested positive for drugs on 22 June 2017 which is more than one year before the commission of the offence between 8 and 9 October 2018.

THE DEFENCE CASE

**[18]** When called for defence, the accused elected to give sworn testimony. He testified that he was of unsound mind after his divorce with him constantly feeling suspicious leading him to take 'ice' (methamphetamine). He has been taking ice for about two to three years and when he takes it, he does not know what happens.

**[19]** Pertaining to the killing of his own father, the accused during examination in chief testified that he heard the voice who direct him to kill the ghost. He could not remember that he had used the machete (P34A) that was shown to him and could not remember that he had cut off the head first, that he has cut his father and that at times he is mentally sound and at times not.

This came across during his cross-examination and the defence asserted that such a line of questioning would clearly show an acceptance by the prosecution that the accused was insane. The defence relied on the case of *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)* [1999] 2 MLJ 1; [1999] 2 CLJ 215 at that the court can make an inference premised upon the manner in which the questions were put.

**[20]** The defence took the position that it was not whether at the time of the event the accused had murdered the deceased, but it should be whether at the time of the commission of the act or acts, the accused had the mental capacity of knowing the nature and effect of what he was doing and that it was wrong and contrary to law. The defence concluded that the prosecution has failed to prove the charge against the accused and that the defence has succeeded in proving on a balance of probabilities that at the time of the commission of the act, the accused did not realise and did not know the nature of the act, and that he did not know what he did was wrong and contrary to law.

**[21]** In reply to the above defence, the prosecution submitted as follows:

(a) the reliance by the defence on the evidence of the prosecution witnesses, SP2, SP3, SP4, SP5, SP6 and SP7 on the mental condition of the accused is misplaced as they were only giving a general opinion of previous conduct that occurred once in a while ('sekali-sekala'). In any event, these witnesses had also given evidence that the accused was normal and was able to discharge various responsibilities. During re-examination of SP3, SP5 and SP6 they each were unable to say whether the accused is in fact medically unsound;

(b) the fact that the accused is a drug addict is not an issue. Instead, the critical issue is whether the accused was in a state of intoxication brought about by the influence of drugs such that he was insane at the time of killing the deceased. There is no direct evidence to this effect. The only evidence of the accused having traces of drugs in his was more than a year ago in 2017. Indeed, the prosecution conceded that their evidence as led through SP15 is that the accused has a history of drug dependency but this does not prove that the accused was legally insane at the time of inflicting the fatal cuts on the deceased;

(c) from the evidence of SP15 and the other independent witnesses, the accused was not mentally disturbed at the time of the commission of the act or acts and instead, he knew the nature and effect of his action and that it was wrong;

(d) on the issue of motive of murder, the prosecution relied on the case of *Pathmanabhan a/l Nalliannen v Public Prosecutor and other appeals* [2017] 3 MLJ 141; [2017] 4 CLJ 137 whereby the Federal

Court held that although motive is not a *sine qua non* and not an absolute must to prove the case of the prosecution, pursuant to s 8(1) of the Evidence Act 1950, it is a relevant fact but the absence of such evidence is not fatal to the prosecution case; and

(e) with regard to the evidence given by the accused, the prosecution repeated that his testimony is not credible.

FINDINGS OF THE LEARNED JC AT THE CONCLUSION OF THE TRIAL

**[22]** At the conclusion of the trial, the learned JC found that the accused had failed to raise any reasonable doubt to the prosecution's case and that the prosecution had successfully proven the case against the accused beyond a reasonable doubt. Thus, the accused was found guilty and convicted of the charge against him. Consequently, the accused was sentenced to death.

**[23]** According to the learned JC, it is for the court to determine whether the accused was legally insane and not for SP15, the Forensic Psychiatrist Specialist or any other medical expert, no matter how eminent, to determine whether the accused was insane at the time that he committed the act or acts. The role of SP15 as a witness was to assist the court in arriving at a decision.

**[24]** The learned JC further stated that SP15 had examined the accused on 51 separate occasions over a 22-week period and found that the accused was able to recall his memory consistently on the crime he was accused of with no deficits in memory. Therefore, the learned JC has no hesitation in finding that the accused was mentally sound at the time of him inflicting the multiple cuts on the deceased.

**[25]** Not only that, the learned JC also found from all the evidence led by the prosecution that the accused was not legally insane at the time of the commission of the offence. To decapacitate a man, would surely cause death and amounts to murder most foul unless, he was of unsound mind or by reason of intoxication, insane temporarily or otherwise, at the time of carrying out the beheading, which the learned JC found the accused was not.

**[26]** The learned JC found that the defence failed to raise any reasonable doubt on a balance of probabilities that the accused did not carry out the act and that at the time of him carrying out the act, he was of unsound mind or by reason of intoxication, insane temporarily or otherwise. Under the law, the one and only sentence that is to be meted out on an accused found guilty of murder is death pursuant to s 302 of the Penal Code.

A THE APPEAL

**[27]** Aggrieved with the decision of the High Court, the accused filed the appeal, which were set for hearing before us. In his petition of appeal, the accused had raised 14 grounds of appeals.

B

**[28]** The defence submitted that the burden of prove place on the accused (which in this case that the accused was of unsound mind when he committed the offence), was only a slight one and such burden can be discharged by evidence of witnesses for the prosecution as well as witnesses for the defence. The defence referred to the case of *Public Prosecutor v Mohamed Noor Jantan* [1979] 2 MLJ 80 and the case of *Wong Chooi v Public Prosecutor* [1967] 2 MLJ 180.

C

D

**[29]** In this regard, the defence counsel had shown to us that from the testimony of prosecution witnesses (ie SP2, SP3, SP4, SP5, SP6 and SP7), they testified that the accused was intoxicated and having a mental problem. It was further submitted that the prosecution had not impeached the evidence led by SP2, SP3, SP4, SP5, SP6 and SP7 and this meant that the prosecution had accepted this fact. The defence referred to the case of *Public Prosecutor v Tai Mei Yuen* [2004] 4 MLJ 541 which held that 'When there is clear conflict of evidence in the prosecution's case itself the benefit of the doubt must be given to the accused'. Another case referred was the case of *Munesuaran a/l Ramasamy lwn Pendakwa Raya* [2015] MLJU 1958; [2016] 2 CLJ 210.

E

F

**[30]** The defence counsel also raised the fact that SP15 also had not denied that there is possibility that the accused was having temporary insanity in which the testimony of SP15 was produced before us as follows:

G

> PB: Very well. Doctor, soalan saya secara ringkas sekiranya pada ketika kejadian beliau mengalami kemabukan disebabkan oleh pengambilan dadah. Boleh atau tidak dia menyebabkan kehilangan kewarasan pada ketika itu sekiranya pada ketika itu beliau dalam keadaan kemabukan disebabkan ... (unclear 13.21.19PM) diambil. Boleh atau tidak?

H

> SP15: Hypothetically if the accussed was intoxicated at that time of alleged offence then yes, it is possibility.

**[31]** The defence further submitted that in deciding the question of whether the accused was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law, this is a matter to be inferred from the proved facts and circumstances and not from expert medical opinion. It is purely a question of fact for the trial judge to determine.

I

**[32]** It was also submitted by the defence that the prosecution's line of questioning showed that the accused was not sane and this is consistent with the defence's case. The question quoted by the defence was as follows:

> S: Tadi peguam ada tanya kamu, kamu kata selepas saya sampai di balai polis baru saya tahu hantu itu adalah bapa saya. Semasa itu saya sudah waras. Soalan saya, bukan selalu kamu tidak siuman. Kamu ada waras jugalah?
>
> J: Ya, benar. Kadang-kadang saya waras dan kadang-kadang saya tidak siuman.

**[33]** On the other hand, the prosecution submitted that the prosecution had proved all the elements of the offence alleged against the accused despite the fact that this case depended on circumstantial evidence. The information received from the accused when he informed SP8 and SP16 can be admitted pursuant to s 27 of the Evidence Act 1950. The prosecution referred to the case of *Siew Yoke Keong v Public Prosecutor* [2013] 3 MLJ 630; [2013] 4 CLJ 149 in which the Federal Court stated as follows:

> [28] In the light of the authorities referred to, we hold that information admissible under s 27 of the Evidence Act includes accused's statement, or his act or conduct such as pointing out which leads distinctly to the discovery of a fact. For such information to be admissible in evidence, there is no duty on the prosecution to prove the voluntariness of the information. Hence it is not necessary to conduct a trial within a trial to determine the voluntariness of the information.

**[34]** On the issue of whether the accused was medically insane or legally insane at the time he committed the offence, the prosecution had referred to the report prepared by SP15 which conclude as follows:

(a) the accused does not have a mental disorder. He has a history of substance dependence;

(b) he was of sound mind at the time of the alleged offence; and

(c) the accused's mental state is currently stable. He is fit to plead and stand trial.

**[35]** It was submitted by the prosecution that the testimony of SP15 was also supported by other evidences, ie the conduct of the accused after the incident whereby he was able to drive for 100km to see SP3 and told SP3 precisely on what he did to the deceased. In fact, SP15 also had taken into consideration that the accused was intoxicated at the time he committed the offence. This can be seen from his statement as follows:

> S: But does your examination rule out the possibility that dia pada ketika kejadian ia disebabkan oleh the substances taken by the accused menyebabkan kehilangan kewarasan?
>
> J: Yes, I did take into account whether the accused was intoxicated at the time of the alleged offence naturally because he was dependent on methamphetamine at that

time. So, the issue was whether he was intoxicated or not. And from my assessment I was able to determine that he was not intoxicated at that time.

**[36]** According to the prosecution, testimony given by SP2, SP3, SP4, SP5, SP6 dan SP7 that the accused is having a mental problem was just their observation. They are not an expert who can make a declaration on the mental status of the accused at the time the offence was committed.

**[37]** The prosecution referred to *Ratanlal and Dhirajlal's Law of Crimes* (27th Ed), at p 323 which stated as follows:

> 8. 'Medical insanity' and 'legal insanity'. There is a good deal of difference between 'medical insanity' and 'legal insanity' and courts are concerned only with the legal and not the medical aspect of the matter. It is not every kind of frantic humour or something unaccountable in a men's action, that points him out to be a mad man, to be expected from punishment. It is not mere eccentricity or singularity of manner that would suffice the pleas of insanity. Abnormality of mind is not by itself sufficient to show that the accused must have acted while of unsound mind. Such exemption can be claimed only when the insane person is incapable of knowing the nature of the act or he is doing either wrong or contrary to law.

**[38]** It was submitted by the prosecution that the defence raised by the accused was not enough to prove that the accused was legally insane at the time he committed the offence. No other expert witness was called by the defence to contradict the report by SP15. Therefore, according to the prosecution, the accused failed in his defense of insanity under s 84 of the Penal Code.

DECISION

**[39]** From the grounds of appeal raised by the defence in this appeal, we sum up that the main issue of the defence's appeal is on the defence of insanity pursuant to s 84 of the Penal Code. For easy reference, s 84 is stated as follows:

> 84. Act of a person of unsound mind
>
> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

**[40]** We have carefully examined the reasoning by the learned JC vis a vis the evidence as recorded and we are unable to agree with the submission of the learned counsel for the accused. We found that the defence failed in its defence in which the accused has failed to cast any reasonable doubt on the prosecution's case and in the same vein we held that the prosecution has succeeded in proving its case against the accused beyond reasonable doubt.

**[41]** For the defence of insanity or unsound mind, what is material is that there must be evidence that at the time when the act or omission was to have occurred the accused must be in the state that he did not know that such act or omission was wrong or contrary to law. However, in this case before us, from the evidences showed that the accused knew that he had killed the deceased. Even though he said he had killed 'hantu', but he knew what he did is the act of killing. That is why when the accused met SP3, he told SP3 that he had killed the deceased. And from the testimony of the accused when he was asked by the prosecution, he in fact admitted as follows:

> S: Saya katakan kepada kamu, kamu selalu tolong bapa tetapi bapa marah pada kamu? Buat silap sikit, bapa ada marah?
>
> J: Kadang-kadang bapa ada marah.
>
> S: Masa itu pun kamu sudah kamu sudah banyak bersabar dengan bapa?
>
> J: Ya, benar.
>
> S: Sehinggakan bila kejadian berlaku, kamu sudah hilang sabar masa itu?
>
> J: Ya, benar. Saya sudah hilang sabar.

**[42]** Nothing from the evidence showed the accused was of unsound mind at the time he committed the act of killing. His conducts showed that he understands the nature of what he is doing is wrong. That is why he wore glove when he killed the deceased and then he decapitated the deceased so that it would be easier for him to dispose the deceased. He was also able to remember that he changed his cloth before he drove to meet SP3.

**[43]** It should be noted that the onus of proving insanity is on the accused pursuant to s 105 of the Evidence Act 1950. It is trite that when the defence of insanity is raised, the accused must prove the defence on the balance of probabilities and not merely to cast a reasonable doubt in the prosecution case (see *Rajagopal v Public Prosecutor* [1977] 1 MLJ 6 and *Goh Yoke v Public Prosecutor* [1970] 1 MLJ 63).

**[44]** On how to determine legal insanity, this court is guided by the case of *Public Prosecutor v Shalima Bi* [2016] 1 MLJ 799 which held as follows:

> In determining the defence of insanity, once it was established, through the aid of expert medical evidence, that an accused was medically insane at the time he committed the act, the next step was for the trial judge to consider whether by reason of the medical insanity the accused was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. Expert medical evidence was irrelevant to determine this question as it was a matter to be inferred from the proved facts and circumstances and not from expert medical opinion. It was purely a question of fact for the trial judge to determine.

**[45]** Thus, the question is whether the learned JC had considered all the relevant and material evidence before arriving at her finding of fact? According to that case also, the defence of insanity under s 84 of the Penal Code is only available where, at the time the accused committed the act, the accused:

(a) did not know the nature of his act;

(b) did not know that what he was doing was wrong; or

(c) did not know that what he was doing was contrary to law.

**[46]** Having gone through the appeal record carefully, we found that the learned JC was correct in his finding of fact that the defence raised by the accused on insanity was not proven. It is not only SP15 found in his report that the accused was sane at the time of commission of the offence, but the other circumstantial evidences also lead to a conclusion that the accused had committed the offence and at the time of the commission of the offence, the accused capable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. Notably also that the expert medical evidence is necessary in the realm of forensic science as it is not something that the court can determine without the benefit of expert opinion.

**[47]** Therefore, we are of the view that the strands of circumstantial evidences led by the prosecution had clearly and undoubtedly showed that the accused understand the consequence of his act. Besides, the testimony given by SP2, SP3, SP4, SP5, SP6 dan SP7 which was relied by the defence also could not prove the accused's defence of insanity.

CONCLUSION

**[48]** In the upshot, having perused the appeal records, the grounds of judgement and the written submissions by parties and for the reasons mentioned above, we conclude that the overall circumstantial evidence adduced by the prosecution points to the only irresistible conclusion that the accused had committed the offence and the defence of insanity raised failed. We found no merit in this appeal. It is our unanimous decision that the conviction against the accused is safe and needs no intervention by this court. Therefore, the appeal is dismissed. The conviction and the death sentence imposed by the High Court are affirmed.

*Appeal dismissed; conviction and sentence imposed by High Court affirmed.*

Reported by Dzulqarnain Ab Fatar